

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Civil Application (CAO) No. 1391/2019
With
Misc. Civil Application Stamp No.13119/2019
in
Second Appeal No.589/2018 With
Second Appeal No.579/2018
Sheshashahi Bhagwan Vs.Sushilabai Thakre (D) Through LRs

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N.S. Warulkar, Advocate for appellants
Mr. A.S. Moon, Advocate for respondents

CORAM : MANISH PITALE, J.

DATED : SEPTEMBER 19, 2019

Although the office note shows that in the applications for restoration of second appeal and for condonation of delay service is awaited, the contesting respondents in this application and appeal are the same as in Second Appeal No.579/2018, which is tagged along with this application / appeal. Since the counsel is already representing the contesting respondents in accompanying appeal and even when this appeal was dismissed for want of prosecution he was appearing for the contesting respondents on caveat, this Court is of the opinion that in the interest of justice the application for restoration of second appeal and for condonation of delay can be taken up for consideration.

2. In these applications, it is pointed out that on 22/04/2019, when the appeal was listed before this Court, the learned counsel for the appellants was held up as he was appearing before another Court. It is stated that the learned counsel was unable to arrange for any colleague to make a request for adjournment, as a result of which the appellants went unrepresented on 22/04/2019 and this Court dismissed the appeal for want of prosecution. It is also pointed out that the appellants have already deposited costs of Rs.3000/- with the High Court Bar Association, Nagpur.

3. In view of the above, the applications are allowed. Consequently, delay is condoned and the appeal is restored.

S.A. No. 579/2018 & S.A. No.589/2018.

Heard learned counsel for the appellants in these two appeals. The principal contention raised on behalf of the appellants is that the Courts below committed grave error in rendering findings against the appellant No.1 Trust, as a result of which the property which was intended to be purchased in the name of the Trust was purchased in the name of original defendant No.1 as original defendant No.2 allegedly misutilized funds of the Trust, thereby causing loss to the public Trust.

2. Issue notice on the following substantial questions of law.

1. Whether the Courts below were justified in holding that the appellants had failed to prove that the agreement for purchase of the suit property was entered into between appellant No.1 Trust and the vendor?

2. Whether the findings rendered by the Courts below regarding misutilization of funds by the original defendant No.2 are perverse?

3. Whether the Courts below were justified in decreeing the counter claim and holding that original defendant No.1 was entitled to possession of the suit property?

3. The notice shall be returnable in 6 weeks.

4. Mr. A.S. Moon, Advocate waives notice on behalf of the legal representatives of the respondent No.1.

Civil Application No.1310/2019

Issue notice on this application for stay, returnable in six weeks.

In the meanwhile, the execution

proceedings initiated by the legal representatives of the respondent No.1 shall remain stayed.

JUDGE

MP Deshpande